



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(S): Koskey

EXAMINER: Robinson,

SERIAL NO.: 10/825,639

ART GROUP: 3742

FILED: April 15, 2004


Case No.: KHI-0401

ENTITLED: Heated Pet Bed

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 (Dale B. Halling)

Attorney of Record Signature

APPEAL BRIEF

Honorable Commissioner of
Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Office Action dated August 27, 2007, which was in response to the first Appeal Brief dated November 6, 2006. The original Appeal is from the second rejection of claims 1-12 in the Office Action dated August 23, 2006. This application was filed on April 15, 2004. Appellant submits this Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. § 41.37 in furtherance of the Notice of Appeal filed herewith. Any fees required under 37 C.F.R. §1.17(b) and any other necessary fees have been paid.

I. Real Party In Interest

The real party in interest is: K&H Manufacturing, a corporation organized and existing under the laws of the state of Colorado, and having a place of business at 975 Ford Street, Colorado Springs, Colorado. See the Assignment recorded at Reel 015230, Frame 0988.

II. Related Appeals And Interferences

There are no appeals or interferences related to the present appeal.

III. Status Of Claims

Claims 1-12 (see Appendix) are pending in this application. Claims 1-12 are rejected and are involved in this appeal.

IV. Status Of Amendments

No amendment was filed subsequent to the rejection of August 23, 2006. There has been no resolution of the substantive rejections.

V. Summary Of Claimed Subject Matter

The independent claims discussed the "Argument" section are claims 1, 7 and 12. A brief summary of these claims is provided below.

Claim 1 requires "a fire retardant covering". This is discussed on page 4, lines 21-22 as "In one embodiment, the covering 22 (FIG. 2) is made of a fire retardant material." This element is also discussed with respect to FIG. 3 elements 42 & 50 (Page 4, lines 25-26 & 28). Claim 1 requires that the covering 22 have a shape of a truncated circle folded in half. This is shown in FIG. 2 and in FIG. 4. This is discussed on page 4, lines 9-14 as "The heated pet mat 20 has covering 22 that is in the form of a truncated semicircle. The truncated semicircle is a semicircle 24 having a radius 26. The ends 28 and 30 of the semicircle shown in dashed lines have been removed from the semicircle 24. Note that it would be possible to use a semicircle on top of a rectangle, but this would increase the amount of wasted covering material." Note that a "truncated semicircle" is defined as a semicircle with the ends 28, 30 removed or squared off. The purpose of the "truncated circle" is discussed on page 5, lines 9-15 as "The sheet of plastic 60 is cut to form either two truncated semicircles 62, 64 or as a truncated circle 66. The truncated circle 66 can be folded to form the two layers of the outer cover of the heated pet mat. The shaded parts 68 of the sheet of plastic 60 are the wasted material. This design significantly reduces the amount of wasted material 68 compared to a full circular design or to full semicircles. This allows the heated pet mat to be produced economically." As stated in the "Background" Section the waste associated with a semicircular or round designs has priced these designs out of the market. (Page 1, lines 21-24)

Claim 1 also requires "a resistive heating element." This is element 46 of FIG. 3 and is discussed on pages 4 & 5, lines 26-29 & 4.

Claim 7 requires a housing having the shape of a truncated semicircle. This is shown in FIG. 2 and in FIG. 4. This is discussed on page 4, lines 9-14 as "The heated pet mat 20 has covering 22 that is in the form of a truncated semicircle. The truncated semicircle is a semicircle 24 having a radius 26. The ends 28 and 30 of the semicircle shown in dashed lines have been removed from the semicircle 24. Note that it would be possible to use a semicircle on top of a rectangle, but this would increase the amount of wasted covering material." Note that a "truncated semicircle" is defined as a semicircle with the ends 28, 30 removed or squared off. The purpose of the "truncated circle" is discussed on page 5, lines 9-15 as "The sheet of plastic 60 is cut to form either two truncated semicircles 62, 64 or as a truncated circle 66. The truncated circle 66 can be folded to form the two layers of the outer cover of the heated pet mat. The shaded parts 68 of the sheet of plastic 60 are the wasted material. This design significantly reduces the amount of wasted material 68 compared to a full circular design or to full semicircles. This allows the heated pet mat to be produced economically." As stated in the "Background" Section the waste associated with a semicircular or round designs has priced these designs out of the market. (Page 1, lines 21-24)

Claim 7 also requires "heating element" contained in the housing. This is element 46 of FIG. 3 and is discussed on pages 4 & 5, lines 26-29 & 4.

Claim 12 requires "a first layer of fire retardant plastic." This is discussed on page 4, lines 21-22 as "In one embodiment, the covering 22 (FIG. 2) is made of a fire retardant material." This element is also discussed with respect to FIG. 3 elements 42 & 50 (Page 4, lines 25-26 & 28). Claim 12 requires that the first layer be in the shape of

a truncated semicircle. This is discussed on page 5, lines 9-15 as "The sheet of plastic 60 is cut to form either two truncated semicircles 62, 64 or as a truncated circle 66."

Claim 12 then requires a first transfer foil. This is element 44 of FIG. 3. The next element of claim 12 is the layer of heating wire. This is element 46 of FIG. 3. The next element is the second transfer foil. This is element 48 of FIG. 3. The next element is the second layer of fire retardant material. This is element 50 of FIG. 3. Claim 12 requires that the fire retardant material be sealed along the edge 52 of the first and second layer. This is discussed on page 5, lines 1-3.

VI. Grounds of Rejection to be Reviewed on Appeal

1. Whether claims 1-11 are unpatentable under 35 USC 103(a) over Stanfield (USPN 5,371,340) in view of Feibus (5,685,257) and further in view of Raitanen et al (6,044,794), Boulet d'Auria (USPN 5,229,281) and Hughes (USPN 6,256,818)?

2. Whether claim 12 is unpatentable under 35 USC 103(a) over Stanfield (USPN 5,371,340) in view of Feibus (5,685,257), Boulet d'Auria (USPN 5,229,281), and Raitanen et al (6,044,794) and further in view of Graflind (4,788,417)?

VII. Argument

Note that essentially these same issues were raised in an Appeal Brief dated November 6, 2006 pursuant to a Notice of Appeal with the same date. The interest of efficient use of Patent Office resources and fairness to the applicant demands that the resolution of these issues not be delayed further by cumulative and essentially repetitive rejections.

Issue 1. Whether claims 1-11 are unpatentable under 35 USC 103(a) over Stanfield (USPN 5,371,340) in view of Feibus (5,685,257) and further in view of Raitanen et al (6,044,794), Boulet d'Auria (USPN 5,229,281) and Hughes (USPN 6,256,818)?

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983).

Claim 1 requires a fire retardant covering in the shape of a truncated circle folded in half. This shape is shown in FIG.s 2 & 4 of the specification and is vitally important in making an economical heated pet mat for igloo shaped doghouses, see FIG. 1. For more information please see the background section, page 1 of the specification. The Examiner suggests (OA dated 8/27/07 page 3) that Raitanen, Boulet d'Auria and Hughes show a truncated circle and Feibus shows folding in half. However, Raitanen does not show a truncated circle. He shows an oval shaped suspended pet bed. Boulet d'Auria shows a pipe or tube. Hughes is a foam pillow with a heating element in the foam rubber 18. Hughes has a standard rectangular pillow case 11. There is no suggestion in any of the prior art references to fold the oval in half. Feibus shows a rectangular pet bed, which might be folded in half but does not suggest this for any other shape. Clearly this combination does not suggest the invention to one of ordinary skill in the art.

What the Examiner has attempted to do is pick out elements from the prior art references without any regard to their teaching. The Examiner has "selected bits and pieces from prior patents that might be modified to fit its" conclusion. This is not the correct standard for non-obviousness. *Panduit Corp. v. Dennison Manufacturing*

Co., 810 F.2d 1561, 1 USPQ2d 1593, 1605 (Fed. Cir. 1987). Stanfield has a top sheet 12 of molded plastic bonded to a lower sheet 14 (Col. 2, lines 41-45). Both parts are rectangular and the top sheet is relatively rigid (Col. 1, line 56). Stanfield is a heated mat. Feibus is a non-heated rectangular pet mat. Raitanen is an oval shaped suspended pet bed. Boulet d'Auria is directed to an "electro-welding element" – clearly this reference is not relevant under the law and cannot be combined with the other elements to produce a case of obviousness. Hughes is a foam pillow with a heating element in the foam rubber 18. Hughes has a standard rectangular pillow case 11. None of these references discuss the problem of making a heated pet mat for an "igloo" or round pet house. The only logical combination of the references is a heated, suspended oval or rectangular pet mat. The combination clearly does not teach or suggest the invention of the present application. Claim 1 is clearly allowable.

Claims 2-5 are allowable as being dependent upon an allowable base claim.

Claim 6 further defines the shape of the mat. The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983). This is not shown or suggested in the prior art references.

Claim 7 requires a housing having a shape of a truncated semicircle. This shape is shown in FIG.s 2 & 4 of the specification and is vitally important in making an economical heated pet mat for igloo shaped doghouses, see FIG. 1. For more information please see the background section, page 1 of the specification. The Examiner suggests (OA dated 8/27/07 page 3) that Raitanen, Boulet d'Auria and Hughes show a truncated circle and Feibus shows folding in half. However, Raitanen does not show a truncated circle. He shows an oval shaped suspended pet bed. Boulet d'Auria shows a pipe or tube. Hughes is a foam pillow with a heating element in the foam rubber 18. Hughes has a standard rectangular pillow case 11. There is no suggestion in any of the prior art references to fold the oval in half. Feibus shows a rectangular pet bed, which might be folded in half but does not suggest this for any other shape. Clearly this combination does not suggest the invention to one of ordinary skill in the art.

What the Examiner has attempted to do is pick out elements from the prior art references without any regard to their teaching. The Examiner has "selected bits and pieces from prior patents that might be modified to fit its" conclusion. This is not the correct standard for non-obviousness. *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2d 1561, 1 USPQ2d 1593, 1605 (Fed. Cir. 1987). Stanfield has a top sheet 12 of molded plastic bonded to a lower sheet 14 (Col. 2, lines 41-45). Both parts are rectangular and the top sheet is relatively rigid (Col. 1, line 56). Stanfield is a heated mat. Feibus is a non-heated rectangular pet mat. Raitanen is an oval shaped suspended pet bed. Boulet d'Auria is directed to an "electro-welding element" – clearly this reference is not relevant under the law and cannot be combined with the other elements to produce a case of obviousness. Hughes is a foam pillow with a heating element in the foam rubber 18. Hughes has a standard rectangular pillow case 11. None of these references discuss the problem of making a heated pet mat for an "igloo" or round pet house. The only logical combination of the references is a heated, suspended oval or rectangular pet mat. The combination clearly does not teach or suggest the invention of the present application. Claim 7 is clearly allowable.

Claims 8-11 are allowable as being dependent upon an allowable base claim.

ISSUE 2. Whether claim 12 is unpatentable under 35 USC 103(a) over Stanfield (USPN 5,371,340) in view of Feibus (5,685,257), Boulet d'Auria (USPN 5,229,281), and Raitanen et al (6,044,794) and further in view of Graflind (4,788,417)?

The question of obviousness requires that we determine if the references, taken as a whole, would suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983). Claim 12 requires a fire retardant having a shape of a truncated semicircle. This shape is shown in FIG.s 2 & 4 of the specification and is vitally important in making an economical heated pet mat for igloo shaped doghouses, see FIG. 1. For more information please see the background section, page 1 of the specification. The Examiner suggests Raitanen, Boulet d'Auria and Hughes (OA dated 8/27/07; page 3) show a truncated circle and Feibus shows folding in half. However, Raitanen does not show a truncated circle. He shows an oval shaped suspended pet bed. Boulet d'Auria shows a pipe or tube. Hughes is a foam pillow with a heating element in the foam

rubber 18. Hughes has a standard rectangular pillow case 11. There is no suggestion in any of the prior art references to fold the oval in half. Feibus shows a rectangular pet bed, which might be folded in half but does not suggest this for any other shape. Grafind according to the Examiner discloses a heating pad with several heating foils. Clearly this combination does not suggest the invention to one of ordinary skill in the art.

What the Examiner has attempted to do is pick out elements from the prior art references without any regard to their teaching. The Examiner has "selected bits and pieces from prior patents that might be modified to fit its" conclusion. This is not the correct standard for non-obviousness. *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2d 1561, 1 USPQ2d 1593, 1605 (Fed. Cir. 1987). Stanfield has a top sheet 12 of molded plastic bonded to a lower sheet 14 (Col. 2, lines 41-45). Both parts are rectangular and the top sheet is relatively rigid (Col. 1, line 56). Stanfield is a heated mat. Feibus is a non-heated rectangular pet mat. Raitanen is an oval shaped suspended pet bed. Boulet d'Auria is directed to an "electro-welding element" – clearly this reference is not relevant under the law and cannot be combined with the other elements to produce a case of obviousness. Grafind according to the Examiner discloses a heating pad with several heating foils. Hughes is a foam pillow with a heating element in the foam rubber 18. Hughes has a standard rectangular pillow case 11. None of these references discuss the problem of making a heated pet mat for an "igloo" or round pet house. The only logical combination of the references is a heated, suspended oval or rectangular pet mat. The combination clearly does not teach or suggest the invention of the present application. Claim 12 is clearly allowable.

VIII. Claims Appendix

1. A heated pet mat, comprising:

a fire retardant covering having a shape of a truncated circle folded in half to form two layers; and

a resistive heating element sandwiched between the two layers.
2. The heated pet mat of claim 1, wherein the two layers are sealed along an edge.
3. The heated pet mat of claim 2, wherein the fire retardant covering is made of acrylonitrile butadien styrene plastic.
4. The heated pet mat of claim 2, wherein the fire retardant covering is made of polyvinyl chloride.
5. The heated pet mat of claim 2, wherein the two layers are sealed by welding the two layers together.
6. The heated pat mat of claim 1, wherein the truncated circle has a width that is 10% shorter than a radius.

7. A heated pet mat, comprising:
- a housing having a shape of a truncated semicircle; and
a heating element contained within the housing.
8. The heated pet mat of claim 7 wherein the housing is formed of two layers of fire retardant plastic.
9. The heated pet mat of claim 8, wherein the two layers of plastic are made of acrylonitrile butadiene styrene plastic.
10. The heated pet mat of claim 7, wherein the heating element includes a resistive heat wire.
11. The heated pet mat of claim 10, wherein the heating element includes a transfer foil.
12. A heated pet mat, comprising:
- a first layer of fire retardant plastic in a shape of a truncated semicircle;
a first transfer foil having approximately a same shape as the first layer of fire retardant plastic adjacent to the first layer of fire retardant plastic;
a layer of heating wire adjacent to the first transfer foil;
a second transfer foil having approximately the same shape as the first layer of fire retardant plastic adjacent to the layer of heating wire; and
a second layer of fire retardant plastic having approximately the same shape as the first layer of fire retardant plastic and sealed along an edge to the first layer of fire retardant plastic and second layer of fire retardant plastic.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None

Respectfully submitted,
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